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July 31, 2025

Via eCourts Supreme

Heather Joy Baker, Clerk
Supreme Court of New Jersey
Richard J. Hughes Justice Complex
25 Market Street, P.O. Box 970
Trenton, New Jersey 08625

Re: Henry Okiogah v. New Jersey Transit, New Jersey Department of Transportation, State of New Jersey, New Jersey Turnpike Authority, Hudson County, and Jersey City
Supreme Court Docket No.: 090856
Appellate Division Docket No.: A-2363-23

On Petition for Certification to the Supreme Court from the
Final Judgment of the Superior Court, Appellate Division

Sat Below: Hon. Joseph L. Marczyk, J.A.D.
Hon. James R. Paganelli, J.A.D.

Letter Brief on Behalf of Defendants-Respondents, New Jersey Transit, New Jersey Department of Transportation, and State of New Jersey, in Opposition to the Petition for Certification

Dear Ms. Baker:

Please accept this letter brief on behalf of Defendants-Respondents, New Jersey Transit, New Jersey Department of Transportation, and State of New



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Jersey (collectively, State Defendants), in opposition to the petition for certification filed by Plaintiff-Petitioner, Henry Okiogah. State Defendants rely primarily on their Appellate Division merits brief, submitted with this letter.

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PROCEDURAL HISTORY AND COUNTERSTATEMENT OF FACTS¹

State Defendants rely on and incorporate the facts and procedural history set forth in their Appellate Division merits brief, supplemented by the following.

Okiogah seeks certification from the Appellate Division's June 5, 2025 decision that affirmed the denial of his motion for leave to file a late notice of claim against State Defendants in connection to his claim that he had been struck by a New Jersey Transit bus. Okiogah v. N.J. Transit, New Jersey Department

¹ These sections have been combined for efficiency and the Court's convenience.

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of Transportation, State of New Jersey, New Jersey Turnpike Authority, Hudson County, and Jersey City, No. A-2363-23 (App. Div. June 5, 2025) (slip op. at 2). (Pa154-74).² The trial court had denied the motion after fully considering the record, finding that Okiogah did not meet “the burden of extraordinary circumstances [to] justify [his] delay in filing the notice of claim.” (Pa32; Pa158). First, the trial court found that Okiogah’s medical records established that “he was physically and mentally capable of contacting an attorney to protect his legal rights during the ninety days following the accident despite his hospitalization and rehabilitation.” (Pa33; Pa159). Second, the trial court also found “unpersuasive” Okiogah’s argument that he was “isolated” and had “no person outside the medical facilities he could rely on to help him seek legal advice” because the records reflected that he had been visited during his hospitalization and rehabilitation stay and “had a friend outside the facility with whom he could communicate.” (Pa33-34; Pa159-60).

On June 5, 2025, the Appellate Division affirmed the denial of Okiogah’s motion for leave to file a late notice of claim. (Pa155). After reviewing Okiogah’s medical records and considering the trial court’s findings under the

² “Pa” refers to appellant’s appendix, and “Pb” refers to appellant’s brief.

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appropriate “abuse of discretion” standard, the Appellate Division concurred with the trial court and found that Okiogah’s injuries “were not severe, debilitating, or uncommon” and further, that “[Okiogah]’s injuries here do not rise to the level of those cases where our courts have found extraordinary circumstances.” (Pa160; Pa171). The Appellate Division also found that the trial court “did consider the full context of [Okiogah]’s situation including his physical condition, coupled with the evidence in the record that he was not cognitively impaired and was alert and oriented during his [rehabilitation] stay.” (Pa172). The Appellate Division also found that the record failed to support Okiogah’s argument that he “was suffering from emotional difficulties” because it “was not raised by way of certification from [Okiogah] before the trial court and is not supported by any medical or expert reports.” (Pa173).

The Appellate Division, in consideration of prior authority, separately departed from “the trial court’s suggestion that [Okiogah] could, or should, have relied on friends to assist him with contacting counsel” (Pa172). However, the Appellate Division aptly noted that the trial court “did not base its decision on this issue, but rather separately determined [Okiogah] himself was capable of contacting an attorney despite being in a rehabilitation facility for several months.” Ibid. While the ability to contact counsel is a “relevant,” but “not itself

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dispositive,” consideration, the Appellate Division recognized that, in addition to finding Okiogah “was capable of communicating with counsel,” the trial court had also “focused on the nature of [Okiogah’s] injuries, concluding they were not so severe or disabling as to constitute extraordinary circumstances to excuse the late filing of a tort claims notice.” (Pa174). Because the trial court had not abused its discretion in concluding that Okiogah “failed to establish extraordinary circumstances,” the Appellate Division affirmed the denial of Okiogah’s motion for leave to file a late notice of claim. Ibid.

On June 11, 2025, Okiogah filed a notice of petition for certification, seeking review of the Appellate Division’s decision.

ARGUMENT

THIS COURT SHOULD DENY THE PETITION FOR CERTIFICATION BECAUSE IT DOES NOT MEET THE CRITERIA OF RULE 2:12-4.

A petition for certification of a final decision of the Appellate Division will be granted only for “special reasons.” R. 2:12-4. Certification will be denied where the Appellate Division’s decision essentially applies settled principles to the facts of a case, does not present a conflict among judicial decisions that requires clarification or calls for supervision by the Supreme

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Court, and does not raise issues of general importance. Fox v. Woodbridge Twp. Bd. of Educ., 98 N.J. 513, 515-16 (1985) (O’Hern, J. concurring); In re Route 280 Contract, 89 N.J. 1, 2 (1982).

Okiogah does not meet any of the requirements for certification here. His petition presents no special reason or question of public importance, nor does the Appellate Division’s decision conflict with any other decisions of the Appellate Division or this Court. (Pb1-18). Instead, the Appellate Division’s decision involves the application of straightforward legal principles to the factual record developed below. Okiogah v. N.J. Transit, New Jersey Department of Transportation, State of New Jersey, New Jersey Turnpike Authority, Hudson County, and Jersey City, No. A-2363-23 (App. Div. June 5, 2025) (slip op. at 2). (Pa154-74). Moreover, contrary to the requirements outlined in Rule 2:12-7(a), Okiogah’s petition fails to identify “the question presented, the errors complained of, the reasons why certification should be allowed, and comments with respect to the Appellate Division opinion.” Instead, his petition merely repeats the arguments he raised to the Appellate Division in his merits brief about the trial court’s factual findings and legal conclusions. (Pb1-18). Because Okiogah fails to satisfy the procedural and substantive requirements to warrant certification, his petition should be denied.

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Here, the trial court aptly employed its discretion in denying Okiogah's motion for leave to file a late notice of claim, and the Appellate Division applied well-settled law in reviewing that decision and finding that the trial court "did not misapply its discretion in finding [Okiogah] failed to demonstrate extraordinary circumstances." (Pa160-74). And while Okiogah may disagree with the Appellate Division's decision, his petition fails to identify any issue or error that might require this Court's review.

In sum, nothing about the Appellate Division's judgment provides a "special reason" under the standards of Rule 2:12-4 to merit this Court's attention.

CONCLUSION

The petition for certification should be denied.

Respectfully submitted,

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